

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DANNY JARVIS,

Plaintiff,

vs.

NYE COUNTY DETENTION, et al.,

Defendants.

Case No. 2:08-cv-01407-PMP-PAL

ORDER

(Mtn to Quash - Dkt. #46)

This matter is before the court on Defendants' Motion to Quash Service of Process of Plaintiff's Summons and For Other Relief (Dkt. #46) filed February 22, 2010. The Motion asserts that Plaintiff improperly served summons on Defendants Nye County Detention, Nye County Commissioners, Terrill Tinnell, Sen. Gregory Arms, Sgt. Terry Rising, and Jesse Martinez without attaching a copy of the Complaint, and Defendants do not know which Complaint they should answer. On March 19, 2010, the court drafted an order on Defendants' Motion to Quash (Dkt. #46) and sent it to the Clerk's office for electronic filing. For reasons the court cannot discern, the order was not electronically filed and docketed.

On January 19, 2010, District Judge Pro entered an Order (Dkt. #38) screening Plaintiff's Third Amended Complaint (Dkt. #33) and directing that the United States Marshals Service effect service of the Third Amended Complaint and Summons on Defendants. It appears that the Marshals Service inadvertently served the Complaint from Case No. 2:08-cv-01404-JCM-RJJ with the Summons rather than the Third Amended Complaint in this case. Case No. 2:08-cv-01404-JCM-RJJ is another case filed by Plaintiff against Nye County and others. Because defense counsel has access to the court's PACER system and could easily view and download the correct complaint, the court questions the resources devoted to filing this motion and the relief requested. However, Defendants are technically

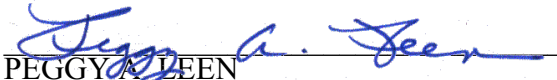
1 correct that if the U.S. Marshal's Service made a mistake in serving the wrong complaint, Defendants
2 are entitled to be formally served in accordance with the provisions of Rule 4(c)(1). The court reminds
3 Defendants of their duty under Fed.R.Civ.P. 4(d)(1) "to avoid unnecessary expenses of serving the
4 summons." Id.

5 Having reviewed and considered the matter,

6 **IT IS ORDERED** that:

- 7 1. Defendant's Motion to Quash (Dkt. #46) is GRANTED.
- 8 2. The U.S. Marshal's Service is directed to re-serve the Summons and Third Amended
9 Complaint upon the Defendants.
- 10 3. Defendants are directed to file a responsive pleading to Plaintiff's Third Amended
11 Complaint within the time allowed by the Federal Rules of Civil Procedure upon
12 receiving service of summons and complaint.

13 Dated this 19th day of March, 2010.

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16 PEGGY A. JEEN
17 UNITED STATES MAGISTRATE JUDGE
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